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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/967,218	09/28/2001	John David Tucker	KCC-15,529	7138
35844	7590	05/02/2006	EXAMINER	
PAULEY PETERSEN & ERICKSON 2800 WEST HIGGINS ROAD HOFFMAN ESTATES, IL 60195			TRAN, THAO T	
			ART UNIT	PAPER NUMBER

1711

DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

8

Office Action Summary

Application No.

09/967,218

Applicant(s)

TUCKER ET AL.

Examiner

Thao T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-23 is/are pending in the application.
- 4a) Of the above claim(s) 12-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-11, 20-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is in response to the Reply filed on 4/20/2006.
2. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.
3. Claims 1 and 4-23 are currently pending in this application.
4. This application contains claims 12-19 drawn to an invention nonelected with traverse in the Reply filed on 8/10/2004. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 4-11, and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gutweiler et al. (US Pat. 5,514,752).

Gutweiler teaches a high impact polypropylene molding composition, comprising a mixture of 1-99% by weight of polypropylene and 0-60% by weight of a rubber, such as ethylene propylene diene (see abstract; col. 1, ln. 12-16, 55-59), overlapping the instantly claimed ranges. Gutweiler further discloses the use of 90% by weight of polypropylene and 5.96% of EPM (see Examples 7-9), which reads on the instantly claimed range in claim 20 and approximates the claimed range in claim 1.

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Gutweiler further teaches the molding can be used for the production of fibers that can be written or printed on (see col. 1, ln. 38; col. 3, ln. 60-63). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, that Gutweiler's invention would be used in making textile fibers and other articles made therefrom. This is because fibers have been commonly made into textile, and by teaching the production of fibers, Gutweiler's invention would be inclusive of textile fibers or the like.

With respect to the textile fiber being spunbond, it has been within the skill in the art that how the fiber is made would have no significant patentable weight when the fiber is being considered. Applicants are reminded that in an article claim, patentability would be imparted by structural elements, and not how the article is made. See MPEP 2113.

Response to Arguments

7. Applicant's arguments filed on 4/20/2006 have been fully considered but they are not persuasive.

Applicants contend that Gutweiler differs from the presently claimed invention because the polypropylene blend of the reference includes polyvinyl butyral. Applicants emphasize that addition of an additive in the prior art would have undermine or defeat the properties of the presently claimed invention. The properties of the presently claimed invention, Applicants assert, are (a) the lack of melt elasticity combined with plasticization and (b) improved softness due to the use of the presently claimed impact modifier.

To provide support for the arguments, Applicants point out the Examples in Tables 2, 5, and 6 in the instant specification. However, these Examples only illustrate a comparison between

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fibers made from polypropylene and those from a blend of polypropylene and EPDM. There is nowhere in the present specification that illustrates the effects an additive would have on the properties of the blend of PP and EPDM to support the claim language of "consisting essentially of".

Moreover, Applicants' arguments with respect to the properties (a) and (b) above are not commensurate with the scope of the claims, since the claim language does not include these properties.

As pointed out in the prior Office action, to support the claim language of "consisting essentially of", Applicants are required to provide data showing that the introduction of additional components would alter the characteristics of Applicants' invention. Applicants have not provided factual evidence to substantiate the arguments that other components would materially affect the basic and novel characteristics of the presently claimed invention. See MPEP 2111.03, *In re De Lajarte*, 337 F.2d 870, 143 USPQ 256 (CCPA 1964). See also *Ex parte Hoffman*, 12 USPQ2d 1061, 1063-64 (Bd. Pat. App. & Inter. 1989).

In addition, while Gutweiler does teach a polypropylene blend including polyvinyl butyral, the reference also discloses, in the prior art section, a polypropylene blend of polypropylene and EPM or EPDM, without the inclusion of polyvinyl butyral. Thus, a blend of polypropylene and EPM or EPDM has been taught in the prior art.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thao T. Tran whose telephone number is 571-272-1080. The examiner can normally be reached on Monday-Friday, from 9:00 a.m. - 5:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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April 28, 2006


THAO T. TRAN
PATENT EXAMINER